



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1995

Mr. Burton F. Raiford
Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR95-873

Dear Mr. Raiford:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34281.

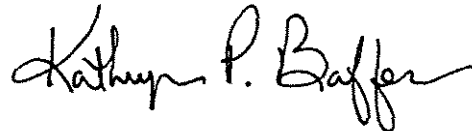
The Department of Human Services (the "DHS") received an open records request for the personnel file of an employee. You state that you have released portions of the personnel file to the requestor in accordance with Open Records Decision No. 600 (1992). You state that, in addition to the types of information addressed by Open Records Decision No. 600 (1992), the personnel file at issue also contains information regarding the employee's decision whether to participate in a United States Savings Bond program. You inform us that the state makes no financial contribution to the program. You contend that this information in the employee's file at issue is excepted from required public disclosure pursuant to section 552.101 of the Government Code. You have submitted for our review the forms at issue.

Section 552.101 excepts from required disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person *and* if the information is of no legitimate concern to the public. *See id.* at 685; Open Records Decision No. 328 (1982). This office has determined that personal financial information, such as an individual's decisions about payroll savings plans, "is highly intimate or embarrassing," and, thus, it meets the first part of the *Industrial Foundation* test. Open Records Decision No. 545 (1990).

An employee's decision to participate in the described savings bond program is a personal investment decision to allocate part of his compensation to optional benefits to which the state does not contribute financially. Consequently, this information is of no legitimate concern to the public. As we noted in Open Records Decision No. 545 (1990) at 4-5, "[w]hile special circumstances may make private facts a matter of legitimate public concern, no such facts are apparent here, and none have been shown." We find no legitimate public interest in the employee's decision to participate in the savings bond program. The information requested is excepted from required disclosure by common-law privacy in conjunction with section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Government Section

KPB/RHS/rho

Ref: ID# 34281

Enclosure: Submitted document

cc: Mr. Antonio Briones
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